



Paper 19

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
333 SOUTH HOPE STREET
48TH FLOOR
LOS ANGELES CA 90071-1448

MAILED

MAR 05 2009

OFFICE OF PETITIONS

In re Application of
Andrew Kostrzewski et al.
Application No. 09/745,363
Filed: December 21, 2000
Attorney Docket No. 100.232

ON PETITION

This is a decision on the renewed Petition to Revive, filed February 24, 2009 under 37 CFR 1.137(b), to revive the above identified application.¹

The petition is **GRANTED**.

This application became abandoned December 12, 2002 for failure to file a timely response to the non-Final Office Action mailed September 11, 2002. Accordingly, a Notice of Abandonment was mailed March 21, 2003. A Petition to Revive was filed December 6, 2007 and was dismissed in a decision mailed February 29, 2008 because while petitioners argued that the delay in filing a timely response to the September 11, 2002 non-Final Office Action was due to a docketing error, the delay was not shown to the satisfaction of the Director to be unintentional for periods (1) and (2), thus the petition lacked compliance with item (3) under 37 CFR 1.137(b). The application was abandoned for more than five years and the evidence provided in the petition filed December 6, 2007 did not establish that the "entire" delay was "unavoidable" or "unintentional".

A renewed petition filed November 24, 2008 was identical to the December 6, 2007 petition and response and was dismissed in a decision mailed December 17, 2008

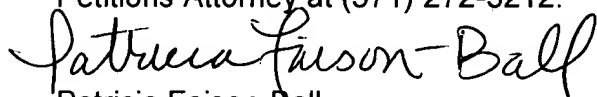
¹A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D).

because no additional evidence to overcome the conclusion that the application was not intentionally abandoned had been provided.

Comes now petitioner with the instant petition to revive with evidence of a docketing error from Leonard Tachner, who was counsel of record at the time of abandonment, to show that the abandonment of the application and the entire period of delay was unintentional.

This matter is being referred to Technology Center 2621 for appropriate treatment on the amendment filed December 6, 2007.

Telephone inquiries concerning this matter may be directed to the undersigned Senior Petitions Attorney at (571) 272-3212.

A handwritten signature in cursive script that reads "Patricia Faison-Ball".

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions